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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/567,614	02/08/2006	Hiroshi Sawada	06016LH	2022
1933 7590 04/14/2008 FRISHAUF, HOLTZ, GOODMAN & CHICK, PC 220 Fifth Avenue 16TH Floor NEW YORK, NY 10001-7708				
EXAMINER				
LESLIE, MICHAEL S				
ART UNIT		PAPER NUMBER		
3745				
MAIL DATE		DELIVERY MODE		
04/14/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/567,614

Applicant(s)

SAWADA, HIROSHI

Examiner

MICHAEL LESLIE

Art Unit

3745

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 February 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date 2/2006, 1/2007.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

Drawings

Figure 8 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi et al (4773369) in view of Tomikawa et al (JP 06-101651).

Kobayashi et al discloses a hydraulic operation controlling unit for a hydraulic excavator having an engine (1), a hydraulic pump (2a, 2b) that is operated by the engine, a hydraulic actuator (3a, 3b) that is operated by pressurized oil that is discharged from this hydraulic pump, an engine controlling means (7, 9, 10, 12) for controlling an output of the engine, and a hydraulic pump absorbing torque controlling means (6a, 6b) for controlling an absorbing torque of the

hydraulic pump, wherein a matching point where the output torque of the engine and the absorbing torque of the hydraulic pump coincide with each other is predetermined in accordance with work contents, the engine controlling means controls the output of the engine in such a manner that output properties of the engine become equi-horsepower properties or approximately equi-horsepower properties in a predetermined range of the engine speed which includes an engine speed that corresponds to the matching point, and the hydraulic pump absorbing torque controlling means controls the absorbing torque of the hydraulic pump in such a manner that the output torque of the engine that corresponds to the matching point and the absorbing torque of the hydraulic pump are made to coincide with each other (Col. 6, Line 66 - Col. 7, Line 36). Wherein a memory means (~7) for storing a relationship between the output torque of the engine and the engine speed, and an engine speed detecting means (12) for detecting an actual engine speed of the engine, are provided, and the engine controlling means obtains a torque value that is to be outputted by the engine from the relationship between the output torque of the engine and the engine speed that are stored in the memory means and the actual engine speed that is detected by the engine speed detecting means, so that the output of the engine can be controlled on a basis of the torque value that has been obtained. Kobayashi et al further teaches that the engine is controlled to match fluctuations in pump load, but does not teach that the hydraulic pump absorbing torque controlling means controls the absorbing torque of the hydraulic pump by increasing or reducing the absorbing torque of the hydraulic pump in accordance with an increase and a decrease in the engine speed.

Tomikawa et al discloses a hydraulic operation controlling unit wherein the absorbing torque of a hydraulic pump is made to fluctuate according to an increase and a decrease in the

engine speed so the output torque of the engine matches the absorbing torque of the hydraulic pump.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Kobayashi et al by having the hydraulic pump absorbing torque controlling means control the absorbing torque of the hydraulic pump by increasing or reducing the absorbing torque of the hydraulic pump in accordance with an increase and a decrease in the engine speed as taught by Tomikawa et al for the purpose of improving fuel economy.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. 6820356 and 4904161 each disclose engine horsepower controllers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL LESLIE whose telephone number is (571)272-4819. The examiner can normally be reached on M-F 8:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Look can be reached on (571) 272-4820. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ML
April 10, 2008

**/Michael Leslie/
Primary Examiner, Art Unit 3745**